IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

THURSDAY, THE 7TH DECEMBER 2006 / 16TH AGRAHAYANA 1928

WP(C).No. 27597 of 2005(I)

AGAINST THE ORDER DATED 18/08/2005 IN IA 470/2004 IN OS.170/2002 of MUNSIF COURT, KUTHUPARAMBA

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PETITIONER:

K.S.JOY, S/O.DEVASIA,
AGED 54 YEARS, PROPRIETOR, YUVARANI TEXTILES,
P.O.IRITTY.

BY ADV. SRI.K.V.PAVITHRAN
SRI.JAYANANDAN MADAYI PUTHIYAVEETTIL

RESPONDENTS:

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1. THE SECRETARY,
KEEZHUR-CHAVASSERI GRAMA PANCHAYAT,
KEEZHUR P.O., IRITTY.

2. ELCY JOSEPH @ ELSAMMA JOSEPH,
W/O.JOSEPH (LATE), AGED ABOUT 59 YEARS,
THEKKEYIL HOUSE, PAYAM P.O., IRITTY.

3. P.C.CHANDRAMOHANAN, S/O.ANANDAN,
AGED 46 YEARS, PROPRIETOR,
MCP INDUSTRIES, P.O.IRITTY.

4. N.NANU, S/O.KUNHIKANNAN,
AGED 65 YEARS, TRADER, P.O. IRITTY.

BY ADV. SRI.V.M.KURIAN
SRI.A.V.THOMAS
SRI.MATHEW B. KURIAN
SRI.K.T.THOMAS
SRI.P.P.RAMACHANDRAN
SRI.SURESH KUMAR KODOTH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD

ON 07/12/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

Ext.P1:- True copy of the plaint in O.S.No.170/2002 before the Munsiff Court, Kuthuparamba.

Ext.P2:- True copy of the written statement filed by the Ist and 2nd defendant.

Ext.P3:- True copy of the Written statement filed by the Ist and 2nd defendant.

Ext.P4:- True copy of the notice dated 29/10/2003.

Ext.P5:- True copy of the acknowledgement.

Ext.P6:- True copy of the acknowledgement.

Ext.P7:- True copy of the acknowledtement.

Ext.P8:- True copy of the affidavit filed by the petitioner before the Munsiff Court, Kuthuparamba in O.S.170/2002.

Ext.P9:- True copy of impleading petition filed by the petitioner before the Munsiff Court Kuthuparamba in I.A.470/2004 in O.S.170/2002.

Ext.P10:- True copy of the counter statement filed by the Secretary, Keezhur Chavassery Grama Panchayat, before the Munsiff Court, Kuthuparamba in O.S.170/2002 I.A.470/2002 dated 18/5/04.

Ext.P11:- True copy of counter submitted by the 2nd respondent before the Munsiff Court Kuthuparamba in O.S.170/2002 I.A.470/2004, dated 30/6/2005.

Ext.P12:- True copy of affidavit filed by the petitioner before the Munsiff Court, Kuthuparamba in O.S.170/2002 dated 17/2/04.

Ext.P13:- True copy of petition filed by the petitioner before the Munsiff Court, Kuthuparamba in I.A.471/2004 O.S.170/2002.

Ext.P14:- True copy of counter statement filed by the Secretary Keezhur Chavassery Grama Panchayat before the Munsiff Court, Kuthuparamba in O.S. 170/2002 I.A.471/2004 dated 18/5/2004.

Ext.P15:- True copy of counter submitted by the 2nd respondent before the Munsiff Court Kuthuparamba O.S.170/2002 in I.A.471/2004 dated 30/6/2005.

Ext.P16:- True copy of the order in I.A.470/2004 in O.S.170/2002 issued by the Munsiff Court, Kuthuparamba dated 18/8/2005.

Ext.P17:- True copy of the order in I.A.471/2004 in O.S.170/2002 issued by the Munsiff Court, Kuthuparamba dated 18/8/2005.

/true copy/

M.SASIDHARAN NAMBIAR,J.

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W.P.(C) NO.27597 OF 2006

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Dated this the 7th day of December,2006

JUDGMENT

Petitioner is the first plaintiff and respondents 1 and 2 are defendants and other respondents are the other plaintiffs in O.S.170/02 on the file of Munsiff Court, Kuthuparamba. Suit was filed against respondents 1 and 2 seeking a decree for mandatory injunction. Respondents in their written statement contended that property where the bunk is situated belongs to the Government and Government is a necessary party. Thereafter petitioners sent Ext.P4 notice as provided under section 80 of the Code of Civil Procedure and after the expiry of sixty days period filed I.A.470/04, an application under Order 1 Rule 10 of the Code to implead the State of Kerala, the Chief Engineer, PWD and the Executive Engineer, PWD as additional defendants. They also filed I.A. 471/04 under Order VI Rule 17 of the Code to amend

the plaint consequent to the impleading application. Respondents 1 and 2 opposed the applications contending that by sending a notice subsequent to the filing of the suit, additional defendants cannot be impleaded and the plaint cannot be allowed to be amended. Under Exts.P16 and 17 orders, learned Munsiff dismissed the applications which are challenged in this petition filed under Article 227 of Constitution of India.

2. Learned counsel appearing for petitioner and respondents 1 and 2 were heard.

3. The arguments of learned counsel appearing for petitioner is that the application to implead the State and the officers were filed only after the expiry of sixty days period provided under section 80 of the Code and they were sought to be impleaded only on the contention of respondents 1 and 2 that the property belongs to the Government which was not known to the petitioners earlier and in such circumstance learned Munsiff should have allowed the applications. Learned counsel appearing for second respondent argued that a notice contemplated under section 80 of C.P.C is a

notice issued prior to the institution of the suit and before the expiry of sixty days from the date of expiry of the notice, no suit will lie and therefore after the institution of the suit plaintiffs are not entitled to send a notice and then implead the State or Officers as additional defendants and orders dismissing the applications are perfectly legal and correct.

4. On hearing learned counsel appearing for petitioner and respondents, it is clear that the suit was originally filed by plaintiffs on the impression that the disputed property belongs to the Panchayat and the bunk occupied by second respondent was put up at the instance of the Panchayat. When the second respondent contended that the property does not belong to the Panchayat but that of the PWD, plaintiffs sent notice as provided under section 80 of the Code and filed an application to implead the State. As pointed out by the learned counsel appearing for petitioner even after getting notice the Government has not sent any reply. The very purpose of sending a notice under section 80 of the Code is to enable

the State to settle the dispute and to avid unnecessary litigation. Though learned counsel appearing for second respondent relied on the decision of the Apex Court in **Bihari Chowdhary v. State of Bihar (AIR 1984 SC 1043)** the facts are different. That was a case where the suit was instituted before the expiry of sixty days from the date of issuance of a notice as provided under section 80 of the Code . The question whether State could be impleaded as an additional defendant, subsequent to the filing of a suit, by sending a notice as provided under section 80 and that too after the expiry of the period provided for a notice under section 80 was not considered. Anyway the availability of the defence to the State on the ground of want of notice under Section 80 is not a fact to be decided at the time of deciding the question whether the additional defendants are to be impleaded or not. In view of the contentions raised by respondents 1 and 2, it is necessary for the plaintiffs to implead the State and the Officers. It is necessary to avoid multiplicity of suits. In such circumstance, court below should

have allowed the applications and impleaded the State and the Officers as sought for. So also the application for amendment should have been allowed. Ext. P16 and P17 orders are quashed. I.A.470/04 and 471/04 stand allowed. Respondents are entitled to file additional written statement. Learned Munsiff to issue summons to additional defendants.The question whether the suit, as against the proposed additional defendants, is bad for want of a notice Section 80 of the Code is to be decided by the court below, after additional defendants appear and raise such a contention.

Writ Petition is disposed as above.

M.SASIDHARAN NAMBIAR
JUDGE

tpl/-

M.SASIDHARAN NAMBIAR, J.

W.P.(C).NO. /06

JUDGMENT

SEPTEMBER,2006